

**Arizona State Board of Homeopathic Medical
Examiners
Minutes of Regular Meeting
March 9, 2004**

I. CALL TO ORDER

Presiding officer, Bruce Shelton, MD, MD(H), called the meeting to order at 9:03 a.m.

ROLL CALL:

BOARD MEMBERS PRESENT:

Bruce Shelton, MD, MD(H), President
Charles Schwengel, DO, MD(H), Vice President
Joan Heskett, Sec/Treasurer
Garry Gordon, MD, DO, MD(H)
Anna Prassa
Annemarie Welch, MD, MD(H)

Marc Harris, Assistant Attorney General, Christine Springer, Executive Director and members of the public were also present.

II. REVIEW/CONSIDERATION AND ACTION- MEETING MINUTES

Discussion of amendments to January 13, 2004 regular session minutes. Mrs. Heskett noted that she was not present at the January meeting and requested that her name be removed from the column titled *Present* and from one reference in which the minutes state that she seconded a motion approving executive session minutes. In addition, the paragraph under Agenda Item II referencing the executive session minutes is erroneous and must be deleted. There were no executive session minutes in January. With recognition of the indicated changes, Dr. Gordon made a motion approving the January 13, 2004 regular session minutes as discussed. Motion seconded by Dr. Welch and passed with a majority vote. Mrs. Heskett and Ms. Prassa abstained from the vote.

III. REVIEW, CONSIDERATION AND ACTION – LICENSE APPLICATIONS

Cesare Climaco MD

Dr. Cesare Climaco's application was reviewed. Noting that Dr. Climaco had submitted 17 hours of coursework in classical homeopathy Dr. Welch stated that Dr. Climaco's application appeared to lack the required 40 hours in classical homeopathy as required by *AAC R4-38-102(E)*. Dr. Climaco responded that he had not updated his application to include certificates verifying his attendance at a course in homotoxicology sponsored by Heel (a board approved course). He believed that with the addition of these hours the requirement would be met and he agreed to send the certificate updating his file. Dr. Shelton stated that the applicant had successfully passed the written examination. Dr. Gordon made a motion accepting Dr. Climaco's application. Ms. Prassa seconded the motion that passed unanimously. The oral examination was conducted. Following the

presentation, Dr. Gordon made a motion accepting Dr. Climaco for licensure as a homeopathic physician. Dr. Welch seconded the motion that passed unanimously. Dr. Shelton encouraged Dr. Climaco to continue his studies in classical homeopathy and to complete coursework that would lead to ACAM certification.

Elliott Schmerler MD

At the commencement of discussion on Elliott Schmerler's application, the Board adjourned to executive session for legal advice pursuant to A.R.S. §38-431.03(A) at 9:45 a.m. following a motion made by Dr. Gordon, seconded by Ms. Prassa. Motion passed unanimously. The Board returned to the regular session at 9:55 a.m.

Dr. Shelton explained to Dr. Schmerler that A.R.S. §32-2912(A)(3) requires an applicant hold a license in good standing to practice medicine from any state or U.S. territory. Dr. Schmerler does not currently hold an active medical license. The applicant addressed the board and stated that at the time he made his initial application (April 15, 2003) his California license was still active. Subsequently, California revoked his medical license following similar action taken in the State of Nevada. Revocation by both states was based on Dr. Schmerler's conviction of a felony for committing tax fraud. There was general discussion concerning denial of the pending application since requirements of A.R.S. §32-2912(A) 1, 3, and 4 were not met. Dr. Schmerler inquired about whether he would be allowed to withdraw the pending application and whether fees were refundable. Assistant Attorney General (AAG) Harris stated that withdrawal is an option and Dr. Schmerler is not barred from reapplying once he has re-activated at least one of his other medical licenses. However, Mr. Harris noted that should Dr. Schmerler re-apply the Board may want to carefully review disciplinary action which was taken by Nevada after their investigation of information relating to patient care issues involving liposuction. After further discussion, Dr. Schmerler stated that he would provide a written request withdrawing his pending application for license. Although Dr. Schmerler passed the written examination he understands that when he resubmits an application for licensure he would be required to retake the written examination.

Simon Trueblood MD

At 12:17 p.m. the Board adjourned to executive session pursuant to A.R.S. §38-431.03(A) to seek legal advice relating to the application submitted by Dr. Simon Trueblood. The motion was made by Ms. Prassa, seconded by Dr. Gordon and passed unanimously. The Board returned to the regular meeting at 12:22 p.m.

Dr. Shelton advised Dr. Trueblood that he did not pass the written examination. He also explained that the instant application did not meet requirements of A.R.S. §2912(A)1,3, or 4. Dr. Trueblood discussed options relating to retaking the examination and the process by which he would reapply. In response to specific questions regarding his active license in the State of Illinois, Dr.

Trueblood explained that the Illinois medical board is in the process of reviewing the Indiana revocation action. There have been several hearings in Illinois about the status of his license, but to date the license is still active. Dr. Trueblood also explained the revocation action taken by the State of Indiana against his medical license. He stated that even though all fines had been paid to the Drug Enforcement Agency (DEA) as required by a Memorandum of Understanding the State of Indiana took action that led to a revocation of his medical license. Dr. Trueblood indicated that he intends to file an appeal of the medical board's action in the Indiana Court of Appeals. Dr. Shelton explained that in order for the Board to act, an applicant must meet the criteria of A.R.S. §32-2912(A)3, 4, and 5. In addition, an applicant must pass the written examination as required by A.R.S. §32-2913(A).

Dr. Gordon made a motion denying Dr. Trueblood's application explaining that the applicant had failed to meet the requirements of A.R.S. §32-2912(A)3, 4, and 5 and A.R.S. §32-2913(A). Ms. Prassa seconded the motion that passed unanimously. Dr. Trueblood was encouraged to resolve the remaining legal challenges within the States of Indiana and Illinois. Dr. Gordon also noted that the legal actions filed by Dr. Trueblood's former employee, Cynthia Mock must also be reconciled before the Board can entertain future applications.

IV. REVIEW, CONSIDERATION AND POSSIBLE ACTION CONCERNING INVESTIGATIONS/COMPLAINTS

1. Previous Matters

The Board adjourned to executive session at 10:47 a.m. for legal advice in the pending matters concerning *Kathleen Fry: LC2003-000767-0010T and 03-11* after a motion was made by Ms. Prassa. Motion seconded by Dr. Gordon and passed unanimously. The Board returned to the regular meeting at 11:00 a.m.

LC2003-000767-0010T Fry vs. State

Assistant Attorney General Harris informed the board that the Superior Court judge had entered a minute entry granting the State's motion to dismiss Dr. Fry's appeal of a letter of concern issued by the Board in a previous complaint matter. The judge will prepare an order finalizing his opinion.

03-11 D.P. for T.P. vs. Kathleen Fry, MD, MD(H)

President Shelton referenced correspondence from Dr. Fry's attorney, Lee Bakunin who had requested that the Board continue Dr. Fry's scheduled oral interview. Dr. Shelton explained that the continuance had been granted.

Dr. Shelton also referred the Board's attention to an affidavit Dr. Fry had submitted as part of Mr. Bakunin's correspondence. In the affidavit, Dr. Fry avers that she no longer refers patients to or utilizes the services of Mr. Vega Rozenberg who had consulted with Dr. Fry during her care of T.P. It was Dr. Shelton's opinion that the affidavit is acceptable. Dr. Gordon noted that the instant complaint had occurred within the same time-frame of previous

complaints (01-19, 02-04, and 02-05) against Dr. Fry. The previous complaints had been closed with a non-disciplinary *letter of concern* to Dr. Fry reminding her that to have a professional connection with an unlicensed practitioner of homeopathic medicine is a violation of A.R.S. 32-2933(11). Dr. Gordon made a motion accepting Dr. Fry's affidavit, closing the investigation and dismissing the complaint. Motion seconded by Ms. Prassa and passed unanimously. Roll Call: 6-0.

Dr. Shelton stated that the Board would welcome an application from Mr. Rozenberg to serve as a homeopathic medical assistant under Dr. Fry's supervision.

2. New Matters

04-03 LB vs. Stuart Lanson, MD, MD(H)

Noting that the AMB had referred this matter to the Homeopathic Board, Dr. Schwengel reviewed the facts of the complaint made by L.B. He stated that the documentation points to a fee dispute in which a patient under Medicare had an unpaid balance that she wanted Dr. Lanson to write off. Medicare rules state that providers can not write off balances because it constitutes the perception of a kickback to the patient.

Dr. Lanson was present to respond to questions from the members. He provided the members with a copy of Federal Anti-Kick Back Laws published by Medicare. Ms. Prassa asked Dr. Lanson why he was not aware of the exclusions in L.B.'s insurance policy that barred full payment of the treatments. Dr. Lanson stated that it was impossible to be aware of all exclusions written by various insurances. The physician relies on the patient to be aware of exclusions within their insurance policies. He also stated that he had responded to complaints in this same matter made by L.B. to Medicare, AMB, and the Better Business Bureau and been exonerated by all the agencies. Dr. Lanson indicated in a response to a question from Mrs. Heskett that he intended to write a letter to L.B. indicating that the remaining fee could not be written off, but that he would not enforce collection. Dr. Schwengel made a motion to close the investigation and dismiss the matter noting that there had not been any evidence of a violation of homeopathic statutes or rules. Mrs. Heskett seconded the motion that passed unanimously. Roll Call 6-0.

V. LEGISLATION – Holistic Dentists

Dr. Shelton reported that he had attended a legislative hearing concerning the possible regulation of holistic dentistry. Dr. Shelton invited Dr. Craig Runsbeck, Executive Director of the Naturopathic Medical Examining Board to address the board on this topic. Dr. Runsbeck stated that the legislation had been deferred for one year. He expressed concern that while the Naturopathic Board was willing to regulate the holistic dentists, the time to do so was not advantageous. Dr. Runsbeck noted that both the Naturopathic and Homeopathic boards would undergo Sunset Reviews scheduled to commence in the summer of 2005 and it

would be important to concentrate on that process first, before undertaking the regulation of the holistic dentists. Dr. Runsbeck stated that considerable opposition had been received from the Arizona Dental Association and the Arizona Medical Board with regard to the Naturopathic Board consideration of regulation of the holistic dentists.

VI. REVIEW, CONSIDERATION AND ACTION REGARDING PROFESSIONAL BUSINESS

1. Dr. Gordon reviewed protocols and informed consents submitted by Lester Adler, MD(H), Robert Zieve, MD(H), Eleazar Kadile, MD(H), and David Rupley, MD(H) for EDTA chelation therapy. Dr. Gordon moved to approve the protocols and consents as submitted. Ms. Prassa seconded the motion that passed unanimously.
2. Dr. Shelton recused himself from the discussion of the Department of Revenue proposed rules regarding Title 15. Revenue, Chapter 5 Transaction Privilege and Use Tax Section R15-5-156 Sales of Prescription Drugs and Prosthetic Appliances. Dr. Schwengel chaired this portion of the meeting and Dr. Shelton briefly explained the historical background surrounding the effort to make homeopathic prescription-only drugs exempt from sales tax. The Department of Revenue is in the process of changing their rules to include a sales tax exemption on the sale of prescription homeopathic drugs. The Department is requesting that licensees be informed of the need to clearly state in the patient's chart whether the drug was given as a prescription or as an over-the-counter sale. The Department is also requesting the board agree to review charts if disputes arise during tax disputes. Dr. Shelton explained that the Department has suggested that the board inform its' licensees that in order for a prescription drug to be eligible for a sales tax exemption, the physician must clearly indicate in the patient's chart the type and amount of drug prescribed. Dr. Gordon made a motion directing that the board take steps to inform licensees that they must clearly signify in their patient charts whether or not a prescribed drug was an over-the-counter remedy or a prescription only item as defined in Arizona law under the Pharmacy Act. The motion included agreement that if disputes involving homeopathic prescription drugs arise, the board would agree to serve as experts if requested to do so by the Department. Dr. Welch seconded the motion that passed with a majority vote. Shelton recused. Dr. Gordon also directed Mrs. Springer to notify the Department of the board's decision and to append an announcement of the decision on the board's web site.
3. Discussion of Dr. Todd Rowe's correspondence on behalf of the Desert Institute of Classical Homeopathy regarding due dates for homeopathic medical assistant application materials. Students enrolled at the Desert Institute of Classical Homeopathy must complete required clinical hours. To work in the clinic the students must obtain homeopathic medical assistant registration from the board. Dr. Rowe requested advice regarding the date paperwork must be received in the board's office that would allow the student timely registration as a medical assistant but would avoid the payment of a second annual renewal fee.

The Board agreed that students enrolled at the Desert Institute of Classical Homeopathy seeking registration as homeopathic medical assistant should submit application materials no later than January 3, 2005.

4. The Board reviewed the format for medical assistant ornamental certificates. Dr. Gordon made a motion approving the format which was seconded by Ms. Prassa. Motion passed unanimously.

VI. EXECUTIVE DIRECTOR REPORT

There was a brief presentation by Mrs. Springer regarding the status of revenues and expenditures. Mrs. Springer explained that nine physicians had not renewed their licenses and notification had been sent to the affected physicians informing them of the April 30 late renewal deadline.

VII. CALL TO THE PUBLIC

No public comment.

VIII. FUTURE AGENDA ITEMS

Discussion of application procedures.

CLOSE OF BUSINESS/ADJOURNMENT

The meeting adjourned at 11:40 a.m. following a motion by Ms. Prassa. Dr. Welch seconded the motion that passed unanimously. The next Regular Meeting of the Board will convene at the State Board's Offices, 1400 W. Washington, Basement Conference Room B-1, Phoenix, Arizona, 9:00 a.m. on **May 11, 2004.**

Respectfully Submitted,

Christine Springer
Executive Director